

Seth Shiloh Schermerhorn

August 10, 2006

Page 58

1 Q. Do you recognize the image in this exhibit?  
 2 A. Yes.  
 3 Q. Is this image the property of IMG?  
 4 A. Yes.  
 5 MR. APGOOD: I'm going to object to use of  
 6 this exhibit because the exhibit is incomplete and  
 7 plaintiff violates the Federal Rules of Evidence in  
 8 that it does not contain the source code which  
 9 underlies the graphic representation of the exhibit.  
 10 The government knows well the distinction between the  
 11 underlying source code and the graphic representation  
 12 of an exhibit, particularly in email, because it has  
 13 previously provided sworn testimony making the  
 14 distinction between the two in other cases regarding  
 15 CAN-SPAM compliance.  
 16 Q. Based on the exhibit in front of you, if you  
 17 were the recipient of this email and you wanted to opt  
 18 out from receiving further email messages from the  
 19 sender, what would you do?  
 20 MR. APGOOD: Objection, calls for  
 21 speculation.  
 22 A. It says "Click here to be removed" below the  
 23 image, and I guess I would try and click there.  
 24 Q. Is the text "Click here to be removed"  
 25 located below the image in this email?

Page 59

1 A. Yes.  
 2 Q. And in your opinion does this email comply  
 3 with what you understand the CAN-SPAM Act and adult  
 4 labeling rule to require?  
 5 MR. APGOOD: Objection, calls for  
 6 speculation. Objection, calls for legal conclusion.  
 7 The witness has not been qualified as an expert, and  
 8 therefore, to provide expert testimony such as  
 9 solicited by the government's question is improper.  
 10 A. I forgot what the question was.  
 11 MR. APGOOD: Madam reporter, please read  
 12 back the question.  
 13 (Reporter read back as requested.)  
 14 A. No.  
 15 Q. Handing you what's been previously marked  
 16 government Exhibit-23, is Bootycakes.com a website  
 17 owned by IMG?  
 18 A. Yes.  
 19 Q. Do you recognize the image in this exhibit?  
 20 A. Yes.  
 21 Q. Is this image the property of IMG?  
 22 A. Yes.  
 23 Q. Looking at the exhibit in front of you,  
 24 Exhibit-23, if you were the recipient of this email,  
 25 and you wanted to opt out from receiving further email

Page 60

1 messages from the sender, what would you do?  
 2 MR. APGOOD: Objection, calls for  
 3 speculation. Objection to the use of this exhibit as  
 4 it is incomplete in that it does not provide with it  
 5 the underlying source code for the email and instead  
 6 all it shows is a graphic representation of the  
 7 email. Therefore, any use of this is in violation of  
 8 the Federal Rules of Evidence.  
 9 MS. HASH: Would Counsel like to make a  
 10 standing objection to the emails used by the  
 11 government?  
 12 MR. APGOOD: Yes.  
 13 A. It says, "If you don't want to be a part of  
 14 our program: Click Here," so I'd probably try and  
 15 click the text that says "Click Here."  
 16 Q. And the text you just referred to, "If you  
 17 don't want to be a part of our program: Click Here,"  
 18 is that text located below the image in this email?  
 19 A. Yes.  
 20 Q. In your opinion, based on the exhibit in  
 21 front of you, does this email comply with what you  
 22 understand the CAN-SPAM Act and the adult labeling  
 23 rule to require?  
 24 MR. APGOOD: I would like to set forth a  
 25 standing objection regarding any questions related to

Page 61

1 emails that deal with complying with the CAN-SPAM Act  
 2 as seeking a legal conclusion by the witness.  
 3 A. No, it doesn't.  
 4 Q. Handing you what's been previously marked  
 5 government Exhibit-24, is JizzLickers.com a website  
 6 owned by IMG?  
 7 A. Yes.  
 8 Q. Do you recognize the content in this  
 9 exhibit?  
 10 A. Yes.  
 11 Q. Specifically what do you recognize?  
 12 A. It looks like a screen shot of  
 13 JizzLickers.com.  
 14 Q. To your knowledge is this email promoting an  
 15 IMG website?  
 16 MR. APGOOD: Objection, calls for  
 17 speculation.  
 18 A. Yeah, I mean, I would assume so.  
 19 Q. Looking at Exhibit-24, if you were the  
 20 recipient of this email and you wanted to opt out from  
 21 receiving further email messages from the sender, what  
 22 would you do?  
 23 MR. APGOOD: Objection, calls for  
 24 speculation.  
 25 A. It says, "Click Here to remove your email

16 (Pages 58 to 61)

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August 10, 2006

Page 62	Page 64
<p>1 address." I'd probably try and click that red text 2 that's below the image that says "Click Here." 3 Q. In the text it says, "Click Here to remove 4 your email address." Is it located below the image in 5 this email? 6 A. Yes. 7 Q. In your opinion does this email comply with 8 what you understand the CAN-SPAM Act and adult 9 labeling rule to require? 10 A. No. 11 Q. Handing you what's been previously marked 12 government Exhibit-29, is MelodyHart.com a website 13 owned by IMG? 14 A. Yes. 15 Q. And do you recognize the content in this 16 exhibit? 17 A. I recognize the image. 18 Q. Is this email promoting an IMG website? 19 A. I can't really tell without seeing the 20 source code of the email, but most likely it is. 21 Q. Looking at government Exhibit-29, if you 22 were the recipient of this email and you wanted to opt 23 out from receiving further email messages from the 24 sender, what would you do? 25 MR. APGOOD: Objection, calls for</p>	<p>1 regular basis to look for fraud and abuse. Do you 2 recall that testimony? 3 A. Yes. 4 Q. You also gave some explanations and examples 5 of that; is that correct? 6 A. Yes. 7 Q. How does review of the stats show how the 8 terms of service are being violated? Let me be more 9 specific. 10 A. I got the question. 11 Q. Okay. 12 A. I mean in reviewing like the referring 13 information where it's actually good referring 14 information and you could see a website, you could 15 see, like, you know, violations of marketing -- the 16 usage of our marketing material. 17 Q. Can you give me an example of how those 18 usage rates would indicate that the terms of service 19 are being violated. 20 A. It would have to be something else that 21 popped -- that made us -- drew attention to it, and 22 then if we started researching affiliates referring 23 traffic and their referring web pages, we could see 24 like any misuse of -- like misleading the referred 25 traffic by making false promises, which would fall</p>
Page 63	Page 65
<p>1 speculation. 2 A. There are no instructions for opting out 3 that I can see. 4 Q. In your opinion does this email comply with 5 what you understand the CAN-SPAM Act and adult 6 labeling rule to require? 7 A. No. 8 Q. What does IMG do to recruit new affiliates? 9 A. Nothing currently. 10 Q. Who at IMG has terminated an affiliate since 11 January 1st, 2004? 12 A. It would be me, if there were any terminated 13 since then. 14 Q. And does IMG monitor new affiliate sign-ups 15 to make sure a terminated affiliate does not sign up 16 to the program again? 17 A. No. 18 MR. APGOOD: Objection to the extent that 19 the question implies that such a duty exists. 20 MS. HASH: I don't have any further 21 questions at this time. 22 E X A M I N A T I O N 23 BY MR. APGOOD: 24 Q. Previously you provided testimony that IMG 25 reviews the stats on a regular basis or somewhat</p>	<p>1 under the part of the terms of service that talks 2 about the marketing material that they're authorized 3 to use or not use. 4 Q. Are these conclusions, then, inferences you 5 draw based upon a number of different sources of 6 information? 7 A. Yes. 8 Q. Is there anything in the statistics 9 reporting that shows definitively that terms of 10 service are being violated? 11 A. No. 12 Q. Previously you gave testimony that it's 13 possible for an affiliate who had been terminated to 14 resubscribe as a new affiliate; is that an accurate 15 assessment of your testimony? 16 A. Yes. 17 Q. In doing so would they have to be providing 18 totally different information than they previously 19 provided to the account that was terminated? 20 A. Yes, to an extent. 21 Q. Would you consider that a fraudulent attempt 22 to become an affiliate? 23 A. Yes. 24 Q. Previously you gave testimony that the 25 affiliate database is searchable, but it's not</p>

17 (Pages 62 to 65)

**From:** "kassia karlie" <godson@dynaco.de>  
**To:** <joe\_c2k2@hotmail.com>  
**Sent:** Thursday, July 15, 2004 8:58 AM  
**Subject:** Witness Interracial Fuckfests of Virgin Black Pussies and Monstrous White Cocks!

short story "Young Goodman Brown"  
an excerpt of Nathaniel Hawthorne's  
texts or other writers you admire. In your work, do you



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in your own documents, and compare that to some other  
with "semantically-poor" words, such as pronouns or prepositions?  
Mail this page to a friend  
RcptName: joe\_c2k2@hotmail.com



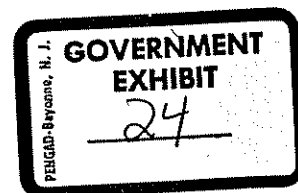
From: "Crystal" <listmanager@redesdeleco.com>  
 To: <ray1300@hotmail.com>  
 Sent: Saturday, August 07, 2004 8:52 AM  
 Subject: Girls Love Man Goo!



### Beautiful Girls Drinking Hot Man Goo!

The preceding e-mail message was brought to you by I-Matrix Tech. You are receiving this e-mail because you signed up to receive periodic e-mail promotions. You may unsubscribe at any time. Please [CLICK HERE](#) to remove your e-mail address from our data base. If you would prefer to contact us by regular mail, please mail all correspondence to : 3959 Van Dyke Rd. Ste 246 Lutz, FL 33558

enl1300^ubgzvny(pbz



From: "Laure Aley" <Valine6qhf@portalen.no>  
To: "Herbert" <herbert65@hotmail.com>  
Sent: Monday, July 19, 2004 11:29 AM  
Subject: This girl from next door is such a hotty

Dude,



percent annual return on investments. In fact, the return will no doubt be

If a person is applying for a job, an employer cannot ask if that person is disabled or ask about the nature or severity of the disability. An employer can ask, however, if the duties of the job can be performed with or without reasonable accommodation. An employer can also ask to describe or to demonstrate how, with or without reasonable accommodation, you will perform the duties of the job. An employer cannot require a recruit to take a medical examination before you are offered a job. Following the job offer, an employer can condition the offer on the recruits passing a required medical examination, but only if all entering employees for that job



category have to take the examination. However, the employer cannot reject the applicant because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business.

force. CCP members and leaders wish economic reform not to be judged on

Baibai,